

SEWARD & KISSEL LLP

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004

WRITER'S DIRECT DIAL:

(212) 574-1448

TELEPHONE: (212) 574-1200

FACSIMILE: (212) 480-8421

WWW.SEWKIS.COM

901 K STREET, NW
WASHINGTON, DC 20001
TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184

January 19, 2016

VIA ECF

Honorable Valerie E. Caproni
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *ING Bank N.V. v. Fujian Ocean Shipping Co. Ltd.*, Case No. 16-CV-00007-
NJB-KWR (E.D. La.) (filed January 4, 2016)

Fujian Ocean Shipping Co. Ltd. v. O.W. Bunker Far East (S) Pte Ltd., 16-CV-
401 (VEC) (S.D.N.Y.) (filed January 19, 2016)

Dear Judge Caproni:

We represent ING Bank N.V. ("ING Bank") as Security Agent, and write concerning the above-referenced action filed January 19, 2016 by Fujian Ocean Shipping Co. Ltd. ("FOSCO") in the Southern District of New York, and the above-referenced, prior-filed action commenced by ING Bank on January 4, 2016 against FOSCO in the Eastern District of Louisiana. ING Bank respectfully submits that under the circumstances this Court should follow the "first to file" rule and preference the matter already proceeding in the Eastern District of Louisiana, and should dismiss the action filed in this court on January 19, 2016 without prejudice to FOSCO's ability to re-assert its claims in the first-filed action currently pending in Louisiana.

The undersigned counsel received actual notice of this action at approximately 6:30 p.m. via email from James Power at Holland & Knight LLP, counsel for FOSCO, following a deposition of Hapag-Lloyd AG scheduled in these matters. As Plaintiffs' counsel is well aware by virtue of their participation in the most recent discovery status teleconference and status report submitted to this Court, another deposition (of Chevron Marine Products LLC) is also scheduled to proceed tomorrow.

Following our brief review of the papers this evening it became immediately apparent to us that FOSCO, the Plaintiff in this proceeding filed on January 19, 2016, is already named as a Defendant in a prior-filed proceeding by counsel for ING Bank N.V. in the Eastern

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District of Louisiana in a matter filed on January 4, 2016, styled *ING Bank N.V. v. Fujian Ocean Shipping Co., Ltd.* (Case No. 16-cv-00007-NJB-KWR). That matter is not being handled by Seward & Kissel LLP but, following review of the papers filed in this Court, the undersigned ran a PACER search and found the prior-filed proceeding pending in that Court.

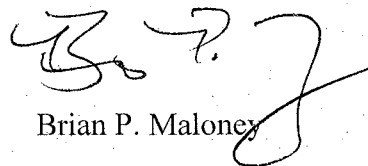
There have already been substantial proceedings in Louisiana, which remain ongoing. The docket in the Louisiana proceeding is attached as **Exhibit 1**. The first amended complaint, filed by ING Bank on January 7, 2016 (together with its exhibits) is attached as **Exhibit 2**. In the Louisiana proceeding, on January 7, 2016 the Court already has granted ING Bank's Motion for Writ of Attachment and Garnishment (Dkt. No. 10) (attached as **Exhibit 3**); and ING Bank's Motion to Allow Vessel to Move Within Port and to Continue Cargo Operations (attached as **Exhibit 4**).

On January 7, 2016, the clerk of the Court of the Eastern District of Louisiana also issued a Writ of Foreign Attachment to counsel for ING Bank in Louisiana (James D. Bercaw of King, Krebs & Jurgens) (attached as **Exhibit 5**). Finally, the docket reflects the filing on January 14, 2016 of a return of service of the writ of foreign attachment, which was served on the Master of the M/V Zheng Yao by ING Bank on January 7, 2016 (attached as **Exhibit 6**).

ING Bank submits that this Court should follow the "first to file" rule and preference the matter already proceeding in the Eastern District of Louisiana, and should dismiss this action without prejudice to FOSCO's ability to re-assert its claims in the first-filed action currently pending in Louisiana. *See, e.g., Eternal Asia Supply Chain Mgmt. v. EQD Corp.*, No. 12 Civ. 0058, 2012 U.S. Dist. LEXIS 176213, *7-11, *18 (S.D.N.Y. Dec. 12, 2012) (citing *Employers Ins. of Wausau v. Fox Entm't Group, Inc.*, 522 F.3d 271, 274-75 (2d Cir. 2008) ("As a general rule, where there are two competing lawsuits, the first suit should have priority."); *Sotheby's, Inc. v. Minor*, 08 Civ. 7694, 2009 U.S. Dist. LEXIS 3509, 2009 WL 73134, at *1 (S.D.N.Y. Jan. 6, 2009) ("[t]he party that seeks to deviate from the first-filed rule has the burden of demonstrating that circumstances justifying an exception exist."). Moreover, because the first-filed action should take precedence, judicial economy and principles of comity among the federal court system counsel that the Louisiana court should have the ultimate decision as to where these claims should properly be litigated. *See Eternal Asia Supply Chain Mgmt.*, 2012 U.S. Dist. LEXIS 176213, at *15, *18.

Accordingly, ING Bank requests that the matter filed by counsel for FOSCO this afternoon be dismissed without prejudice in favor of the first-filed action already pending against FOSCO concerning these matters in the Eastern District of Louisiana, and that ING Bank be granted such other and further relief as is just and proper.

Respectfully submitted,



Brian P. Maloney